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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

BOB STUMP - Chairman
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2014 DEC 10 A 10:44

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ARIZONA CORPORATION COMMISSION
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DEC 10 2014

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IN THE MATTER OF THE FORMAL
COMPLAINT OF ACCIPITER
COMMUNICATIONS, INC. AGAINST
VISTANCIA, LLC, AND COX ARIZONA
TELCOM, LLC.

DOCKET NO. T-03471A-05-0064

PROCEDURAL ORDER**BY THE COMMISSION:**

On January 31, 2005, Accipiter Communications, Inc. ("Accipiter") filed with the Arizona Corporation Commission ("Commission") a formal complaint against Vistancia Communications, LLC and Shea Sunbelt Pleasant Point, LLC (both now known as Vistancia, LLC ("Vistancia")) and Cox Arizona Telcom, LLC ("Cox"). The complaint arose out of Vistancia's controlling telecommunications providers' access to the Vistancia development in Peoria, Arizona, through a private easement arrangement and assessment of an access fee. Accipiter alleged that Cox and Vistancia had created the private easement arrangement to unlawfully stifle competition.¹ Accipiter has entered into a Settlement Agreement with Vistancia and Cox. This docket initially remained open at the request of the Commission's Utilities Division Staff ("Staff"),² but has had no activity since 2009.

On November 5, 2014, Cox filed a Motion to Dismiss this matter for the following reasons: (1) Cox and Accipiter have settled their dispute, (2) Accipiter has requested to withdraw from the docket, (3) the private easement arrangement has been extinguished by the City of Peoria, (4) Accipiter is currently providing service in Vistancia, (5) the passage of time has proven that the

¹ Accipiter alleged that there was a scheme crafted by Vistancia and Cox to monopolize the telecommunications market within the Vistancia development by intentionally excluding competition and advancing the financial interests of Vistancia at the expense of customer choice. Accipiter also alleged that the Vistancia and Cox scheme supplanted the jurisdiction of the Commission.

² For additional procedural history, please see the Procedural Orders issued in this matter on March 27 and May 23, 2008, and on February 12, 2009.

1 private easement concept was a one-time occurrence, (6) the provision of service to planned
2 developments has changed such that Cox no longer enters into preferred provider marketing
3 agreements, (7) the passage of time has created challenges to conducting any further hearings in this
4 matter due to witness availability and recall, and (8) limited resources should not be expended on an
5 issue that is no longer relevant to the telecommunications market. In addition, Cox described the
6 terms of the settlement agreement, docketed in December 2005, and provided additional information
7 concerning the points enumerated above. Cox requested that the Commission dismiss the complaint
8 and close this docket.

9 On December 9, 2014, Staff filed a Response to the Cox Motion to Dismiss, stating that Staff
10 has no objection to dismissal of this matter.

11 No other response to the Cox Motion to Dismiss has been filed.

12 Because there has been no objection to the Cox Motion to Dismiss, and in light of the points
13 enumerated above, it is reasonable and appropriate to grant the Cox Motion to Dismiss and to close
14 this docket.

15 IT IS THEREFORE ORDERED that the **Cox Motion to Dismiss is hereby granted.**

16 IT IS FURTHER ORDERED that **Docket No. T-03471A-05-0064 is hereby closed.**

17 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
18 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
19 hearing.

20 DATED this 10th day of December, 2014.

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23 
24 SARAH N. HARPRING
25 ADMINISTRATIVE LAW JUDGE
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Copies of the foregoing mailed/delivered
this 10th day of December, 2014, to:

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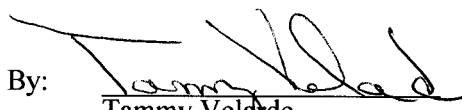
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